

SB1841



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1841

Introduced 2/9/2011, by Sen. Linda Holmes

SYNOPSIS AS INTRODUCED:

415 ILCS 5/31

from Ch. 111 1/2, par. 1031

Amends the Environmental Protection Act. Requires the Environmental Protection Agency to serve each notice of alleged violation within 90 rather than 180 days after receiving a complaint alleging a violation of the Act, any rule adopted under the Act, a permit granted by the Agency, or a condition of such a permit. Prohibits the Agency from disclosing investigative data until it has served the alleged violator with a notice of the alleged violation. Defines "investigative data". Effective immediately.

LRB097 08434 JDS 48561 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning safety.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by
5 changing Section 31 as follows:

6 (415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

7 Sec. 31. Notice; complaint; hearing.

8 (a)(1) Within 90 ~~180~~ days of becoming aware of an alleged
9 violation of the Act or any rule adopted under the Act or
10 of a permit granted by the Agency or condition of the
11 permit, the Agency shall issue and serve, by certified
12 mail, upon the person complained against a written notice
13 informing that person that the Agency has evidence of the
14 alleged violation. At a minimum, the written notice shall
15 contain:

16 (A) notification to the person complained against
17 of the requirement to submit a written response
18 addressing the violations alleged and the option to
19 meet with appropriate agency personnel to resolve any
20 alleged violations that could lead to the filing of a
21 formal complaint;

22 (B) a detailed explanation by the Agency of the
23 violations alleged;

1 (C) an explanation by the Agency of the actions
2 that the Agency believes may resolve the alleged
3 violations, including an estimate of a reasonable time
4 period for the person complained against to complete
5 the suggested resolution; and

6 (D) an explanation of any alleged violation that
7 the Agency believes cannot be resolved without the
8 involvement of the Office of the Illinois Attorney
9 General or the State's Attorney of the county in which
10 the alleged violation occurred and the basis for the
11 Agency's belief.

12 (2) A written response to the violations alleged shall
13 be submitted to the Agency, by certified mail, within 45
14 days of receipt of notice by the person complained against,
15 unless the Agency agrees to an extension. The written
16 response shall include:

17 (A) information in rebuttal, explanation or
18 justification of each alleged violation;

19 (B) a proposed Compliance Commitment Agreement
20 that includes specified times for achieving each
21 commitment and which may consist of a statement
22 indicating that the person complained against believes
23 that compliance has been achieved; and

24 (C) a request for a meeting with appropriate Agency
25 personnel if a meeting is desired by the person
26 complained against.

1 (3) If the person complained against fails to respond
2 in accordance with the requirements of subdivision (2) of
3 this subsection (a), the failure to respond shall be
4 considered a waiver of the requirements of this subsection
5 (a) and nothing in this Section shall preclude the Agency
6 from proceeding pursuant to subsection (b) of this Section.

7 (4) A meeting requested pursuant to subdivision (2) of
8 this subsection (a) shall be held without a representative
9 of the Office of the Illinois Attorney General or the
10 State's Attorney of the county in which the alleged
11 violation occurred, within 60 days of receipt of notice by
12 the person complained against, unless the Agency agrees to
13 a postponement. At the meeting, the Agency shall provide an
14 opportunity for the person complained against to respond to
15 each alleged violation, suggested resolution, and
16 suggested implementation time frame, and to suggest
17 alternate resolutions.

18 (5) If a meeting requested pursuant to subdivision (2)
19 of this subsection (a) is held, the person complained
20 against shall, within 21 days following the meeting or
21 within an extended time period as agreed to by the Agency,
22 submit by certified mail to the Agency a written response
23 to the alleged violations. The written response shall
24 include:

25 (A) additional information in rebuttal,
26 explanation or justification of each alleged

1 violation;

2 (B) a proposed Compliance Commitment Agreement
3 that includes specified times for achieving each
4 commitment and which may consist of a statement
5 indicating that the person complained against believes
6 that compliance has been achieved; and

7 (C) a statement indicating that, should the person
8 complained against so wish, the person complained
9 against chooses to rely upon the initial written
10 response submitted pursuant to subdivision (2) of this
11 subsection (a).

12 (6) If the person complained against fails to respond
13 in accordance with the requirements of subdivision (5) of
14 this subsection (a), the failure to respond shall be
15 considered a waiver of the requirements of this subsection
16 (a) and nothing in this Section shall preclude the Agency
17 from proceeding pursuant to subsection (b) of this Section.

18 (7) Within 30 days of the Agency's receipt of a written
19 response submitted by the person complained against
20 pursuant to subdivision (2) of this subsection (a), if a
21 meeting is not requested, or subdivision (5) of this
22 subsection (a), if a meeting is held, or within a later
23 time period as agreed to by the Agency and the person
24 complained against, the Agency shall issue and serve, by
25 certified mail, upon the person complained against a
26 written notice informing the person of its acceptance,

1 rejection, or proposed modification to the proposed
2 Compliance Commitment Agreement as contained within the
3 written response.

4 (8) Nothing in this subsection (a) is intended to
5 require the Agency to enter into Compliance Commitment
6 Agreements for any alleged violation that the Agency
7 believes cannot be resolved without the involvement of the
8 Office of the Attorney General or the State's Attorney of
9 the county in which the alleged violation occurred, for,
10 among other purposes, the imposition of statutory
11 penalties.

12 (9) The Agency's failure to respond to a written
13 response submitted pursuant to subdivision (2) of this
14 subsection (a), if a meeting is not requested, or
15 subdivision (5) of this subsection (a), if a meeting is
16 held, within 30 days, or within the time period otherwise
17 agreed to in writing by the Agency and the person
18 complained against, shall be deemed an acceptance by the
19 Agency of the proposed Compliance Commitment Agreement for
20 the violations alleged in the written notice issued under
21 subdivision (1) of this subsection (a) as contained within
22 the written response.

23 (10) If the person complained against complies with the
24 terms of a Compliance Commitment Agreement accepted
25 pursuant to this subsection (a), the Agency shall not refer
26 the alleged violations which are the subject of the

1 Compliance Commitment Agreement to the Office of the
2 Illinois Attorney General or the State's Attorney of the
3 county in which the alleged violation occurred. However,
4 nothing in this subsection is intended to preclude the
5 Agency from continuing negotiations with the person
6 complained against or from proceeding pursuant to the
7 provisions of subsection (b) of this Section for alleged
8 violations which remain the subject of disagreement
9 between the Agency and the person complained against
10 following fulfillment of the requirements of this
11 subsection (a).

12 (11) Nothing in this subsection (a) is intended to
13 preclude the person complained against from submitting to
14 the Agency, by certified mail, at any time, notification
15 that the person complained against consents to waiver of
16 the requirements of subsections (a) and (b) of this
17 Section.

18 (b) For alleged violations that remain the subject of
19 disagreement between the Agency and the person complained
20 against following fulfillment of the requirements of
21 subsection (a) of this Section, and as a precondition to the
22 Agency's referral or request to the Office of the Illinois
23 Attorney General or the State's Attorney of the county in which
24 the alleged violation occurred for legal representation
25 regarding an alleged violation that may be addressed pursuant
26 to subsection (c) or (d) of this Section or pursuant to Section

1 42 of this Act, the Agency shall issue and serve, by certified
2 mail, upon the person complained against a written notice
3 informing that person that the Agency intends to pursue legal
4 action. Such notice shall notify the person complained against
5 of the violations to be alleged and offer the person an
6 opportunity to meet with appropriate Agency personnel in an
7 effort to resolve any alleged violations that could lead to the
8 filing of a formal complaint. The meeting with Agency personnel
9 shall be held within 30 days of receipt of notice served
10 pursuant to this subsection upon the person complained against,
11 unless the Agency agrees to a postponement or the person
12 notifies the Agency that he or she will not appear at a meeting
13 within the 30 day time period. Nothing in this subsection is
14 intended to preclude the Agency from following the provisions
15 of subsection (c) or (d) of this Section or from requesting the
16 legal representation of the Office of the Illinois Attorney
17 General or the State's Attorney of the county in which the
18 alleged violations occurred for alleged violations which
19 remain the subject of disagreement between the Agency and the
20 person complained against after the provisions of this
21 subsection are fulfilled.

22 (c)(1) For alleged violations which remain the subject of
23 disagreement between the Agency and the person complained
24 against following waiver, pursuant to subdivision (10) of
25 subsection (a) of this Section, or fulfillment of the
26 requirements of subsections (a) and (b) of this Section,

1 the Office of the Illinois Attorney General or the State's
2 Attorney of the county in which the alleged violation
3 occurred shall issue and serve upon the person complained
4 against a written notice, together with a formal complaint,
5 which shall specify the provision of the Act or the rule or
6 regulation or permit or term or condition thereof under
7 which such person is said to be in violation, and a
8 statement of the manner in, and the extent to which such
9 person is said to violate the Act or such rule or
10 regulation or permit or term or condition thereof and shall
11 require the person so complained against to answer the
12 charges of such formal complaint at a hearing before the
13 Board at a time not less than 21 days after the date of
14 notice by the Board, except as provided in Section 34 of
15 this Act. Such complaint shall be accompanied by a
16 notification to the defendant that financing may be
17 available, through the Illinois Environmental Facilities
18 Financing Act, to correct such violation. A copy of such
19 notice of such hearings shall also be sent to any person
20 that has complained to the Agency respecting the respondent
21 within the six months preceding the date of the complaint,
22 and to any person in the county in which the offending
23 activity occurred that has requested notice of enforcement
24 proceedings; 21 days notice of such hearings shall also be
25 published in a newspaper of general circulation in such
26 county. The respondent may file a written answer, and at

1 such hearing the rules prescribed in Sections 32 and 33 of
2 this Act shall apply. In the case of actual or threatened
3 acts outside Illinois contributing to environmental damage
4 in Illinois, the extraterritorial service-of-process
5 provisions of Sections 2-208 and 2-209 of the Code of Civil
6 Procedure shall apply.

7 With respect to notices served pursuant to this
8 subsection (c)(1) which involve hazardous material or
9 wastes in any manner, the Agency shall annually publish a
10 list of all such notices served. The list shall include the
11 date the investigation commenced, the date notice was sent,
12 the date the matter was referred to the Attorney General,
13 if applicable, and the current status of the matter.

14 (2) Notwithstanding the provisions of subdivision (1)
15 of this subsection (c), whenever a complaint has been filed
16 on behalf of the Agency or by the People of the State of
17 Illinois, the parties may file with the Board a stipulation
18 and proposal for settlement accompanied by a request for
19 relief from the requirement of a hearing pursuant to
20 subdivision (1). Unless the Board, in its discretion,
21 concludes that a hearing will be held, the Board shall
22 cause notice of the stipulation, proposal and request for
23 relief to be published and sent in the same manner as is
24 required for hearing pursuant to subdivision (1) of this
25 subsection. The notice shall include a statement that any
26 person may file a written demand for hearing within 21 days

1 after receiving the notice. If any person files a timely
2 written demand for hearing, the Board shall deny the
3 request for relief from a hearing and shall hold a hearing
4 in accordance with the provisions of subdivision (1).

5 (3) Notwithstanding the provisions of subdivision (1)
6 of this subsection (c), if the Agency becomes aware of a
7 violation of this Act arising from, or as a result of,
8 voluntary pollution prevention activities, the Agency
9 shall not proceed with the written notice required by
10 subsection (a) of this Section unless:

11 (A) the person fails to take corrective action or
12 eliminate the reported violation within a reasonable
13 time; or

14 (B) the Agency believes that the violation poses a
15 substantial and imminent danger to the public health or
16 welfare or the environment. For the purposes of this
17 item (B), "substantial and imminent danger" means a
18 danger with a likelihood of serious or irreversible
19 harm.

20 (d) (1) Any person may file with the Board a complaint,
21 meeting the requirements of subsection (c) of this Section,
22 against any person allegedly violating this Act, any rule
23 or regulation adopted under this Act, any permit or term or
24 condition of a permit, or any Board order. The complainant
25 shall immediately serve a copy of such complaint upon the
26 person or persons named therein. Unless the Board

1 determines that such complaint is duplicative or
2 frivolous, it shall schedule a hearing and serve written
3 notice thereof upon the person or persons named therein, in
4 accord with subsection (c) of this Section.

5 (2) Whenever a complaint has been filed by a person
6 other than the Attorney General or the State's Attorney,
7 the parties may file with the Board a stipulation and
8 proposal for settlement accompanied by a request for relief
9 from the hearing requirement of subdivision (c)(1) of this
10 Section. Unless the Board, in its discretion, concludes
11 that a hearing should be held, no hearing on the
12 stipulation and proposal for settlement is required.

13 (e) In hearings before the Board under this Title the
14 burden shall be on the Agency or other complainant to show
15 either that the respondent has caused or threatened to cause
16 air or water pollution or that the respondent has violated or
17 threatens to violate any provision of this Act or any rule or
18 regulation of the Board or permit or term or condition thereof.
19 If such proof has been made, the burden shall be on the
20 respondent to show that compliance with the Board's regulations
21 would impose an arbitrary or unreasonable hardship.

22 (f) The provisions of this Section shall not apply to
23 administrative citation actions commenced under Section 31.1
24 of this Act.

25 (g) Until the Agency issues and serves upon a person
26 complained against a written notice pursuant to subdivision

1 (a)(1) of this Section informing that person that the Agency
2 has evidence of an alleged violation, the Agency shall not
3 disclose any investigative data concerning the alleged
4 violation of the Act, any rule adopted under the Act, a permit
5 granted by the Agency, or a condition of such a permit. For the
6 purposes of this subsection (g), "investigative data" means the
7 identity of an individual, data on individuals which is
8 non-public, and all data collected by the Agency as part of an
9 active investigation undertaken for the purposes set forth in
10 subdivision (a)(1) of this Section.

11 (Source: P.A. 92-574, eff. 6-26-02; 93-152, eff. 7-10-03.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.